

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIMBERLY OLOCKI,

Plaintiffs,

v.

BARTON HEALTHCARE SYSTEM, et
al.,

Defendants.

No. 2:20-cv-00789 MCE CKD

ORDER

On November 3, 2021, the court held a hearing on plaintiff's motion to compel the depositions of four of defendants' employees. (ECF No. 22.) Thomas Dimitre appeared for plaintiff, and Teresa Fitzgerald appeared for defendants. For the reasons set forth below, the undersigned will deny plaintiff's motion without prejudice.

This action concerns alleged harassment, discrimination, and retaliation by plaintiff's employer. The following facts are taken from the parties' joint statement on the motion to compel. (ECF No. 25.)

The complaint was filed April 16, 2020. (ECF No. 1.) The following day, the district judge assigned to this action issued an Initial Pretrial Scheduling Order. (ECF No. 3.) The order stated that all non-expert discovery must "be completed no later than three hundred sixty-five (365) days from the last date the answer may be filed with the Court[.] . . . In this context, 'completed' means that all discovery shall have been conducted so that all depositions have been

1 taken and any disputes relative to discovery shall have been resolved by appropriate order if
2 necessary and, where discovery has been ordered, the order has been obeyed.” (ECF No. 3 at 2.)

3 On May 14, 2020, defendants filed an answer to the complaint, the last day to do so. Under the
4 Initial Pretrial Scheduling Order, the discovery cutoff date was one year later, May 14, 2021.

5 On July 21, 2020, the parties submitted a Joint Rule 26(f) Report and Discovery Plan,
6 proposing a non-expert discovery cutoff date of May 31, 2021. (ECF No. 8 at 5.) The court
7 never issued an order adopting this schedule. Defendants contend that the operative schedule is
8 still the Initial Pretrial Schedule, while plaintiff claims the lack of a subsequent order made it
9 unclear when the discovery cutoff was. Under either schedule, discovery ended in May 2021.

10 On July 22, 2020, the district judge ordered the parties to engage in the Voluntary Dispute
11 Resolution Program. (ECF No. 10.) After settlement talks failed on February 9, 2021,
12 defendants served a notice of plaintiff’s deposition to take place on March 24, 2021; this was
13 changed to April 22, 2021 at plaintiff’s request. On that day, plaintiff’s counsel again postponed
14 plaintiff’s deposition until May 14, 2021, when defendants deposed plaintiff for less than four
15 hours, with frequent breaks. By agreement with plaintiff’s counsel, defendants completed
16 plaintiff’s deposition on June 4, 2021. In a July 31, 2021 communication with plaintiff’s counsel,
17 defendants stated that “discovery is closed.”

18 On August 1, 2021, plaintiff’s counsel sent notices of deposition for four of defendants’
19 employees, with deposition dates in October 2021. Defendants maintained that discovery had
20 closed and refused to produce these individuals for deposition. Plaintiff asserts that the Initial
21 Scheduling Order did not take into account the VDRP process, which took seven months, and
22 claims she “diligently pursued the depositions of Defendants’ witnesses once VDRP was
23 completed.” (ECF No. 25 at 11.) Plaintiff also contends she had a “reasonable good faith belief
24 that the one-year deadline was not being strictly adhered to because Defendants [completed] her
25 deposition after the deadline, and because the court had not made an order after the joint
26 scheduling statement[.]” (*Id.* at 12.)


27 Rule 16(b) of the Federal Rules of Civil Procedure provides that a scheduling order may
28 not be modified except by leave of court upon a showing of good cause. In this action, the court’s

1 Initial Pretrial Scheduling Order states: “The parties are reminded that, pursuant to Rule 16(b)... ,
2 the Initial Pretrial Scheduling Order shall not be modified except by leave of court upon a
3 showing of good cause.” (ECF No. 3 at 6.)

4 Here, plaintiff did not attempt to notice depositions until August 2021, months after the
5 May 2021 discovery cutoff set by the Initial Scheduling Order. As the undersigned is bound by
6 this scheduling order, issued by the district judge, plaintiff’s motion to compel will be denied
7 without prejudice to plaintiff seeking to amend the scheduling order before the district judge.

8 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel depositions
9 (ECF No. 22) is denied without prejudice.

10 Dated: November 4, 2021

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12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE
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